

The sale of photocopies from a photocopy machine has been determined to be a service occupation transaction and is, therefore, subject to tax under the Service Occupation Tax. See 86 Ill. Adm. Code Part 140. (This is a GIL).

December 5, 2001

Dear Xxxxx:

This letter is in response to your letter dated September 25, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

Enclosed are receipts for photo copies made at AAA.

My question is

Is this a legal charge for sales tax?

The sale of photocopies from a photocopy machine has been determined to be a service occupation transaction. Therefore, the sellers will have either Service Occupation Tax or Use Tax considerations depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. The servicemen are required to collect the corresponding Service Use Tax from their customers.

If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen may use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service. Upon selling their product, they are required to collect the corresponding Service Use Tax from their customers. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal

property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service use Tax from their customers. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers. See 86 Ill. Adm. Code 140.108. The servicemen collect the corresponding Service Use Tax from their customers. If an office store also incurs Retailers' Occupation Tax on its sales of general merchandise and is authorized to elect a de minimis method of accounting for their Service Occupation Tax liability, this is the one they would elect. We do not know if this is the case in your situation, however.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. De minimis servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. These servicemen are also not liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. See 86 Ill. Adm. Code 140.109.

The correct sales tax rate for general merchandise in Morton Grove is 8.5%. However, since sales of photocopies are subject to Service Occupation Tax, which should be calculated using one of the methods set forth above, it appears that the amount of tax may have been incorrectly calculated. It appears that tax has been collected on 100% of the selling price.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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Enc.